

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR08-607

JEREMY GARRETT

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** MARCH 11, 2009

APPEAL FROM THE DESHA  
COUNTY CIRCUIT COURT,  
[NO. CR2007-98-4]

HONORABLE DON E.GLOVER,  
JUDGE

AFFIRMED

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**RITA W. GRUBER, Judge**

A jury found Jeremy Garrett guilty of delivery of a controlled substance, cocaine, within a thousand feet of a church. He was sentenced to 168 months in the Arkansas Department of Correction for the delivery of the cocaine and to an additional twelve months' enhancement because of the transaction's proximity to the church. Garrett now appeals, contending that the trial court erred in denying his motion for a directed verdict. We disagree and affirm the conviction.

Garrett presents two arguments in support of his contention that the denial of his motion for a directed verdict was error. He first argues that the jury convicted him upon circumstantial evidence because the videotape of the drug transaction, introduced into evidence at trial, did not clearly show that delivery was made to the confidential informant. Second, he argues that the actions of the confidential informant corrupted the chain of

custody between the alleged transaction and the delivery of the alleged cocaine, allowing the jury to consider alternate hypotheses.

“Delivery” of a controlled substance includes the actual or constructive transfer from one person to another of a controlled substance in exchange for money. Ark. Code Ann. § 5-64-101)(7) (Supp. 2007). The purpose of establishing the chain of custody is to prevent the introduction of evidence that has been tampered with or is not authentic. *Kincannon v. State*, 85 Ark. App. 297, 151 S.W.3d 8 (2004). The trial court must be satisfied within a reasonable probability that the evidence has not been tampered with, but it is not necessary for the State to eliminate every possibility of tampering. *Id.* Minor uncertainties in the proof of chain of custody are matters to be argued by counsel and weighed by the jury, but they do not render the evidence inadmissible as a matter of law. *Id.* To preserve a point on appeal, a proper objection must be asserted at the first opportunity after the matter occurs. *Dickerson v. State*, 363 Ark. 437, 214 S.W.3d 811 (2005).

If circumstantial evidence alone is relied upon, it must exclude every reasonable hypothesis other than guilt of the accused in order to be substantial. *Lowe v. State*, 357 Ark. 501, 182 S.W.3d 132 (2004). Direct evidence is evidence that proves a fact without resort to inference when, for example, it is proved by witnesses who testify as to what they saw, heard, or experienced. *Id.* Furthermore, direct evidence is evidence which, if believed, resolves the issue. *Id.* It is within the province of the jury to accept or reject testimony as it sees fit. *Id.*

The testimony of one eyewitness is sufficient to sustain a conviction; when a jury gives

credence to a witness's testimony, the appellate court does not disregard it unless it was "so inherently improbable, physically impossible, or . . . clearly unbelievable that reasonable minds could not differ thereon." *Williams v. State*, 351 Ark. 215, 222-23, 91 S.W.3d 54, 58-59 (2002). A buyer of illicit drugs is not an accomplice of the seller, and his testimony need not be corroborated. *E.g.*, *Talley v. State*, 312 Ark. 271, 849 S.W.2d 493 (1993).

Here, the evidence presented in the light most favorable to the State was as follows. Officer Trent Vollmer of the Tenth Judicial Task Force testified that on April 24, 2007, he and confidential informant James Johnson, who was paid fifty dollars a case, made a controlled buy in Dumas. Vollmer took the precautions of checking a confidential informant's pockets and vehicle to make sure there were no weapons, controlled substances, or money before buys were made; a video camera was placed on the person to record the transaction, the recorder turned on, and the person given twenty dollars. Vollmer checked Johnson and found him to be "clean." Johnson left, returned a short time later, and turned over a suspected cocaine rock. The video was retrieved, and the contraband was submitted to the State Crime Lab after Vollmer placed it in a plastic bag and manilla envelope that he taped and initialed. Results from the lab, entered into evidence without objection, showed the substance to be cocaine. Vollmer explained at trial that there was no attempt to recover the twenty dollars because of the long-term operation in Dumas lasting several months.

James Johnson testified that Officer Vollmer searched him, searched his truck, and wired him with a camera on April 24, 2007. Afterward, Johnson telephoned Garrett and purchased twenty dollars' worth of cocaine from him in Johnson's residence, an apartment

provided by the sheriff's department. Johnson denied hiding "crack" in his truck or on his person, and he testified that a video recording played at trial accurately showed him getting the crack from Garrett.

Garrett moved for a directed verdict on the basis that there were questions about whether a transaction actually took place and whether the chain of custody was unbroken. He argued that the video recording showed only "something" happening and that whether money actually changed hands was unknown. He also argued that, because Johnson walked around his apartment and then held a coffee cup while transporting the contraband to Vollmer, the "environment" could have been corrupted between the time of the alleged buy and Johnson's delivering the cocaine rock to Vollmer. On appeal he again argues that the videotape was unclear, leaving the jury to speculate whether a delivery of cocaine occurred, and that Johnson could have planted the cocaine between the time he made the alleged transaction and gave the item to Vollmer for testing.

It was up to the jury to determine the credence of Johnson's testimony as to what he saw, heard, and experienced. We hold that his testimony, if believed by the jury, constituted direct evidence sufficient to show that Garrett delivered cocaine. Because Garrett did not object to the admission of the cocaine into evidence at the first opportunity and waited until moving for a directed verdict to raise the chain-of-custody issue, his second argument is not preserved for our review.

Affirmed.

PITTMAN and BAKER, JJ., agree.